

APPENDIX D

Summary of Basic Mitigation Land Requirements before Land is Transferred to
the Fish and Wildlife Service

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The following represents a summary of basic mitigation land requirements before land is transferred over to the Service. This does not necessarily represent a comprehensive list, but does represent our best effort to identify all land requirements within reason.

1. For inclusion into the National Wildlife Refuge (NWR) system the lands must be located within a refuge's acquisition boundary.
2. The Service must be provided copies of any easements/agreements for right-of-way on the property especially as it pertains to maintenance of such right-of-way, frequency of maintenance and costs associated with that maintenance if the maintenance is to be performed by the landowner.
3. The area must be surveyed prior to acquisition by the United States or transfer to the Fish and Wildlife Service. The survey will be conducted by the Corps of Engineers (Corps) or an approved contractor. Boundaries must be marked and permanent monuments set at all corners. Copies of the surveyor notes, plats, etc. resulting from such survey must be provided to Service.
4. Language must be placed in the deed dedicating the mitigation land to fish and wildlife conservation in perpetuity.
5. When possible any restrictive covenants or liens shall be removed, especially if they could interfere with mitigation implementation, operation and/or maintenance.
6. Completion of a Level 1 survey for hazardous, toxic, and/or radioactive wastes with a copy being provided to the Service. If the Level 1 survey indicates the need for further investigations/surveys, those investigations/surveys must be completed and a copy provided to the Service. Lands having unremediated hazardous, toxic, and/or radioactive wastes present may not be accepted into a NWR. Remediated sites will be assessed for inclusion on a case-by-case basis. Documentation of the level of remediation is to be provided to the Service.
7. Funding mechanism for operation and maintenance of the mitigation lands and mitigation features (e.g., water control structures, timber stand improvements, etc.).
8. Documentation must be provided to the Service describing the mitigation goals and objectives in addition to a description of necessary operation and maintenance activities needed to accomplish the stated goals and objectives.
9. Mineral rights should be purchased. If it is not possible to purchase, then protection of surface rights via the following language:

"The vendors reserve for themselves, their successors and assigns, the right to explore, for, operate, produce, remove and transport, oil and gas from the lands herein described. The vendors reserve unto themselves, their successors and assigns, the right of ingress and egress over the said lands in pursuance of the reservations set forth above.

The land is now subject to oil and gas lease in favor of _____, as per lease of record in the records of _____, pages _____ of Book _____, and the conveyance is subject to the rights of the lessee in said lease.

The oil and gas reservations made by the vendors herein in favor of themselves, their successors and assigns, shall be subject to the following stipulations, and any lease made by the vendors, their successors or assigns, subsequent to the date of this deed, shall contain the following stipulations for the protection of the vendee.

The vendors, their successors and assigns, agree that prior to entry upon the land for purposes of exploration, development or production of, oil and/or gas, they shall obtain a Special Use Permit from the U.S. Fish and Wildlife Service, which permit is for the purpose of providing for access and protecting the natural resources of the area for which the land was acquired, and whose terms and conditions will not unreasonably restrain the activities of the vendors, and their successors and assigns.

It is mutually understood between the parties that the intention of the Government in acquiring this area is to create a refuge for, and the protection of, wildlife in the area herein acquired, and the vendors will conform to, and be governed by, and the vendors herein bind themselves, their successors and assigns, agents and employees, to conform to, and be governed by, the rules and regulations pertaining to the protection of wildlife and refuge administration prescribed from time to time by the Secretary of the Interior or his/her authorized agent, the Director of Fish and Wildlife Service, except that such regulations shall not unreasonably restrain the exercise and use by the vendors, their successors and assigns, of the reservation set out in this agreement."

10. The Service would need a title commitment and policy in favor of United States of America that is in the American Land Title Association (ALTA) U.S. Policy 9/28/91 format as provided in Title Standards 2001.

If the title remains with the local-sharer or the Corps a General Plan as provided for under Section 3 of the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 et seq.) must be written. However, the Service may choose to not manage lands for which it does not have title.